IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2406 OF 2005

IN

SUMMONS SUIT NO.1317 OF 2002

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Vijaya Bank ...Plaintiff

v/s.

M/s.P.P.Trading Co. & ors. ...Defendants

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Mr.P.G.Kinikar i/b Ms.Rathna Maravarman for the Plaintiff.

Mr.Jaideep Raut i/b Ms.U.M.Jheveri for the Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH APRIL,2007

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs for restoration of the summons for judgment. The summons for judgment was dismissed for non-prosecution by order dated 7th March, 2005. Perusal of the order dated 7th march, 2005 shows that the matter was called out twice before the court, till the Plaintiff remained absent. Therefore, the summons for judgment was dismissed for default.

2. Perusal of the affidavit filed in support of the motion shows that the reason that has been given for non-appearance of the Plaintiff and his advocate before the court is that it is practice followed in the office of the Plaintiff’s advocate that a junior clerk checks the daily board in the morning by going to the High Court premises and communicates to the advocate’s office what are the matters listed and then the advocate attends the court. It is stated that on that particular date i.e. 7-3-2005 the clerk missed the case and therefore, the advocate did not remain present. No explanation is given why the

Plaintiff or representative of the Plaintiff was absent. The name of the junior clerk who is supposed to check the daily board is not disclosed. Affidavit of the junior clerk is not filed. What is shocking is that the matter is in High Court, the High Court supplies daily board to the Bar Association. It is not stated whether the advocate is a member of the Bar Association, why does the advocate not see the board which is supplied to the Bar Association. The Board of this court is also displayed on Web-site of this court. No explanation is given why the advocate does not check the board on the web-site. Affidavit discloses complete carelessness on the part of the advocate. The affidavit that has been filed in support of this motion really discloses very shocking and disturbing state of affairs. The affidavit discloses that the advocate who is to appear in court in a matter appearing on board of the High Court comes to know of the matter only in the morning of the day on which the matter is on board. One does not know when does the advocate prepare himself for arguing the matter before the court.

3. I had, therefore, put it to the learned Counsel appearing for the Plaintiff that considering the suit

claim the Plaintiff should agree to pay substantial costs to the Defendant and I had suggested that an amount of Rs.10,000/- would be reasonable considering the degree of negligence on the part of the Plaintiffs and their lawyer.

4. The learned Counsel appearing for the Plaintiffs expressed his inability to do so. In my opinion, considering the conduct of the advocate, the summons for judgment does not deserve to restored. Notice of Motion is, therefore, disposed of.

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